

PROPOSED RULES OF PROCEDURE

ADOPTED BY THE STATE BOARD OF ELECTIONS AS THE DULY CONSTITUTED STATE OFFICERS ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATING PETITIONS SEEKING TO PLACE ESTABLISHED POLITICAL PARTY CANDIDATES ON THE BALLOT FOR THE FEBRUARY 5TH, 2008 GENERAL PRIMARY ELECTION

Pursuant to Section 10-10 of the *Election Code* (10 ILCS 5/28-4, 10 ILCS 5/10-10), the State Board of Elections (the "Board"), a duly constituted electoral board under Section 10-9 of the *Election Code*, hereby adopts the following rules of procedure:

1. EXPEDITED PROCEEDINGS

On all hearing dates set by the Board or its designated hearing officer, the objector and the candidate (at times individually referred to as "party" or collectively referred to as the "parties") shall be prepared to proceed with the hearing of their case. Due to statutory time constraints, the Board must proceed as expeditiously as possible to resolve the objections. Therefore, there will be no continuances or resetting of the initial hearing or future hearings except for good cause shown. During the course of the proceedings, parties must be reasonably available by telephone, facsimile machine or e-mail to receive notices from the Board or opposing parties.

2. APPEARANCE

The candidate or objector may appear in person on his or her own behalf and participate in any proceeding before the Board or may appear by an attorney licensed to practice law in the State of Illinois. Non-attorneys other than those acting pro se shall not appear or participate in the Board's hearings on behalf of either the candidate or the objector, except that non-attorneys may participate at any records examination on behalf of any party. Out of state attorneys may appear subject to Part 125.60 of the Rules and Regulations of the State Board of Elections. A party must file with the Board and other parties of the case a written appearance stating his or her name, address, telephone number, and, if available, a fax number and e-mail address as well as the name and contact information of his or her attorney, where appropriate.

If a party has received actual or constructive notice of a hearing and fails to appear, the failure to appear shall constitute waiver by such party as to any action taken at that hearing or any agreement made by and between the parties present at the hearing. If an objector fails to appear at the initial hearing after having received due notice, the Board may dismiss the objection for want of prosecution.

At the initial hearing the Board will offer an objector who has not verified his or her objection an opportunity to verify the objection. Verification shall provide an evidentiary basis sufficient for the

Board to make a determination of the matter in the event that the candidate does not appear and/or contest the matters placed in issue.

3. AUTHORITY OF THE BOARD

The Board (through its duly appointed hearing examiner if applicable; See Part 4 below) shall conduct all hearings and take all necessary action to avoid delay, to maintain order, to ensure compliance with all notice requirements, and to ensure the development of a clear and complete record. The Chairman of the Board, a member of the Board designated by the Chairman or the Hearing Examiner shall preside over the hearing. The Board shall have all powers necessary to conduct a fair and impartial hearing including, but not limited to:

- (a) Administer oaths and affirmations;
- (b) Regulate the course of hearings, set the time and place for continued hearings, fix times for filing of documents, provide for the taking of testimony by deposition if necessary, and in general conduct the proceedings according to recognized principles of administrative law and the provisions of these Rules;
- (c) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitious or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;
- (d) Rule upon offers of proof and receive relevant evidence;
- (e) Direct parties to appear and confer for the stipulation of facts or simplification of issues, and otherwise conduct case management conferences;
- (f) Dispose of procedural requests or similar matters;
- (g) Issue subpoenas and rule upon objections to subpoenas and discovery requests;
- (h) Consider and rule upon all motions presented in the course of the proceedings except that a Motion to Dismiss can only be ruled upon by the Board;
- (i) Consider such evidence as may be submitted, including, but not limited to, documentary evidence, affidavits and oral testimony; and
- (j) Enter any order that further carries out the purpose of these Rules.

The Board may on its own motion, strike any objection if it determines that the objection does not meet the requirements set forth in 10 ILCS 5/10-8. In addition, the Board on its own motion may strike any portion of an objection that it determines to be not well grounded in fact and/or law.

4. HEARING EXAMINERS

In view of the time limitations and the amount of evidence to be presented, the Board may appoint a hearing examiner in any case which the Board deems such an appointment necessary or expedient. Any hearing examiner so appointed shall have the duties and powers of the Board as set forth in these rules, except that a hearing examiner shall not have the power to rule upon any motion which would be dispositive of the objection or issue a final decision. In addition, any hearing examiner appointed by the Board is authorized and directed (a) to hold a full hearing and receive all evidence and argument, (b) to prepare a record of the hearing including a full transcript of court reporter stenographic notes of the proceedings, (c) to prepare an outline of all the evidence, issues and argument and (d) to prepare recommendations, and proposal for decision for submission to the Board and the parties. In cases where a hearing examiner is appointed, the Board shall not issue a final decision until a proposal for decision submitted by the Hearing Examiner is served upon the parties and an opportunity is afforded each party to take exceptions, whether written or oral, and, if the Board so permits, oral argument before the Board. The Board will make a final ruling on the objection and may consider the following as part of its consideration and appraisal of the record: the hearing transcript, the hearing officer's outline, recommendations and proposal for decision, and any exceptions, briefs, exhibits or arguments presented by the parties.

5. CASE MANAGEMENT CONFERENCE (Initial Hearing)

The Board will notify the parties to appear at a specified time and place for a conference with the General Counsel of the State Board of Elections, his designee or the Board's appointed hearing examiner for the purpose of considering issues such as scheduling, number of witnesses, discovery matters and any other proceedings intended to aid in the expeditious resolution of the objection. This is usually done at the same time as the initial hearing before the State Officers Electoral Board. Additional case management conferences may be called by the Board, the General Counsel or the appointed Hearing Examiner when necessary.

6. SERVICE OF DOCUMENTS

All briefs, notices, documents, pleadings, answers and correspondence shall be served upon the opposing parties, or their attorneys if represented by counsel, and filed with the General Counsel or hearing examiner where appropriate. All briefs, notices, documents, pleadings, answers and correspondence may be sent by telefax or e-mail attachment if the other receiving party or his or her representative agrees. In those instances where a telefax or e-mail communication is used, a hard copy shall also be sent by regular mail. The date the telefax or e-mail attachment is received shall be deemed the date notice is given.

7. MOTIONS PRACTICE

All Motions Generally

- (a) If a hearing examiner has been appointed, motions shall be addressed to the hearing examiner, with copies provided to the General Counsel's office in Springfield. The hearing examiner will decide motions in due course and will recommend a decision on dispositive motions to the Board. If a hearing examiner has not been appointed motions will be filed with the General Counsel and will be decided by the Board.
- (b) The Board will decide all motions in cases in which no hearing examiner has been appointed. In accordance with the Open Meetings Act, the Board may meet by video conference call to rule on motions. The Chairman may appoint a member of the Board or the staff of the Board to hear and decide for the Board all motions except dispositive motions. Motions addressed to the Board shall be thoroughly briefed so as to minimize the time needed for oral argument.
- (c) Motions for continuance are discouraged and will be granted only in extreme circumstances.

Dispositive Motions

- (d) The Board will decide all dispositive motions upon receipt of the recommendation of a hearing examiner and/ or the General Counsel.
- (e) Preliminary motions not already ruled upon and objections to an objector's petition in the nature of a motion to dismiss or strike the objections will be heard prior to the case on the merits. The Board may, in its discretion, reserve rulings on preliminary motions and objections pending further hearing thereon.
- (f) The Board may, upon its own motion with notice to the parties, dismiss for failure to prosecute an objection in any case where the objector fails to attend the initial meeting of the Board at which the objection is called.

8. SUBPOENAS

At the request of any party, the Chairman or the Hearing Examiner may issue subpoenas requiring the attendance of witnesses at a deposition or hearing and subpoenas *duces tecum* requiring the production of such books, papers, records and documents as may relate to any matter under inquiry before the Board. Subpoenas and subpoenas *duces tecum* shall be issued in substantially the same manner as stated by the Illinois Code of Civil Procedure. The decision of the Chairman or Hearing Examiner to issue or not to issue a subpoena may be overruled by a vote of five concurring members of the Board.

In case any person so served shall neglect or refuse to obey a subpoena, or refuse to testify in a hearing before the Board or Hearing Examiner, the Board may file a petition in the Circuit Court setting forth the facts of such knowing refusal or neglect. The petition shall be accompanied by a copy of the subpoena, the return of service thereon and the sworn statement of the person before whom the witness was to appear that the witness did not so appear. The petition shall apply for an order of the Court requiring such person to comply with the duly issued subpoena.

9. EVIDENCE

Evidence will be heard by either the Board or the duly appointed hearing examiner as may be submitted, including, but not limited to, documentary evidence, depositions, affidavits, and oral testimony. Evidentiary depositions submitted by either party shall be entered into evidence. Discovery depositions shall be entered into evidence if agreed to by both parties, otherwise such depositions may only be used for purposes of impeachment. Such documentary evidence shall be presented at a hearing, however service of such documentary evidence may be made by facsimile or e-mail followed by a copy to be served by U.S. Mail if the Board or hearing officer finds that to be the most expedient method of service.

Due to the fact that the Board must hear and pass upon objections within a limited time, extended examination and cross examination of witnesses will be subject to the discretion of the Board, and the Board will not be bound by the rules of evidence which prevail in the circuit courts of Illinois. The Chairman shall make all necessary evidentiary rulings, subject to appeal to the entire Board. Where a hearing examiner has been appointed, he or she will receive all evidence and make all evidentiary rulings, subject to review by the entire Board. The Board will not retry issues heard by a hearing examiner unless the hearing examiner has excluded evidence the Board believes should have been admitted. In such cases the Board will hear the excluded evidence and such other evidence as may be appropriate in response to the matter excluded. The Board will not hear evidence that could have been but was not presented to the hearing officer.

10. ARGUMENT

All arguments and evidence must be confined to the points raised by the objector's petition and objections, if any, to the objector's petition. The Board reserves the right to limit oral arguments in any particular case and will ordinarily allow not more than ten minutes per side for argument.

11. ORDER

If the objections are sustained in whole or in part, the Board will issue an Order declaring the remedy up to and including invalidation of the nomination papers. The Board will state its findings in writing noting the objections which have been sustained. If the objection is overruled, the Board will issue the appropriate Order; stating its findings in writing.

12. GENERAL PROCEDURES

For the matters not covered herein, the Board will generally follow the provisions of the Code of Civil Procedure of Illinois and the rules of the Illinois Supreme Court regulating discovery and practice in trial courts, provided however that the Board will not be strictly bound by the Code or rules in all particulars.

13. SESSIONS

After the Board convenes the initial hearing, it will be in continuous session until all objections arising out of that filing period have been considered and disposed of, and, in the discretion of the Board, its session may be extended or recessed for a period to be determined by the Board.

14. TRANSCRIPT

A transcript of the proceedings will be made by a certified court reporter. Copies may be purchased from the reporter and will not be furnished by the Board.

ADOPTED THIS

_____)	CONSTITUTING THE
_____)	STATE BOARD OF
_____)	ELECTIONS
_____)	SITTING AS THE
_____)	DULY AUTHORIZED
_____)	STATE OFFICERS
_____)	ELECTORAL
_____)	BOARD

APPENDIX

Listed below are the most common grounds for objections to nominating petitions and the basis on which the Board will render decisions on objections unless evidence or argument presented at hearing persuade the Board that circumstances require a differing decision.

When the records examination is being conducted, any exceptions to the decision of the examiner must be made to the ruling at the time the ruling is made or the exception to the ruling is waived. Either party however, may at the beginning of the records examination issue a general objection to any adverse decision of the records examiner obviating the need for individual objections. If, subsequent to the general objection, a party decides not to take exception to a particular ruling of the records examiner, the party must withdraw the objection as to that particular ruling.

If the Board determines that a pattern of fraud exists based on an inordinate number of invalid petition signers and/or petition circulators, such that the integrity of the entire petition or the petition sheets of individual circulators is sufficiently compromised, the Board may strike the entire petition (or individual petition sheets) on this basis.

I. Objections to Individual Signers

A. Signer's Signature Not Genuine

The voter's original signature on his or her registration card (in either hard copy or electronic format) shall be examined. If, in the opinion of the records examiner the signature is not genuine, the objection shall be sustained. Collateral evidence of the validity of the signature is admissible, such as testimony of a person purporting to observe one person signing for another. There is no requirement that a signature be in cursive rather than printed form. Any objection solely on the ground that the signature is printed and not in cursive form will be denied as failing to state grounds for an objection.

B. Signer Not Registered at Address Shown

The voter's registration information (in either hard copy or electronic format) shall be examined. If the address on the voter's card does not match the address opposite his or her name on the petition, the objection shall be sustained. **NOTE:** If the voter resided at the address shown on the petition at any time during the petition circulation period, the objection shall be overruled pending evidence from the objector that the voter did not reside at such address on the date he/she signed the petition. The petitioner bears the burden of showing that the signer resided at the correct address during the circulation period.

C. Signer Resides Outside the State

Any objection to a petition signer on the grounds that the address is not located in the state of Illinois, and whose address is determined by the records examiner to not in fact be located in Illinois, shall be sustained.

D. Signer's Address Missing or Incomplete

If there is no address listed other than a city or village, the objection shall be sustained unless, in the city, town or village, street addresses either do not exist or are not commonly used. Where the petition and the registration card both show the same rural route and box number, and no street address, the objection will be overruled if no other address is available in the area where the voter resides in his or her voter registration information. If the petition shows a street and house number and the registration card shows a rural route and box number the objection will be sustained. If the voter's place of residence has in fact not changed, but only the designation of it has changed, it is the burden of the candidate to show that only the designation of the residence has changed. If the address listed next to the voter's signature matches the registration record in pertinent part (eg. the petition lists "John Doe, 1020 South Spring, Springfield" and the registration record lists "John Doe, 1020 South Spring, P.O. Box 4187, Springfield), the objection will be overruled.

E. Signature is Not Legible

If the records examiner determines that a signature is not legible, the objection will be sustained, however the basis of the objection must be that the petition signer is not registered at the address shown on the petition. If the basis of the objection is that the signature is not genuine, the objection will be overruled on the basis that it is impossible to determine genuineness of the signature without a comparison of the signature to that contained on the voter registration record. In the event that the objection is sustained, the candidate will have an opportunity to present a copy of the petition signer's voter registration record for a signature comparison. If in the opinion of the records examiner or the Hearing Examiner the signature is genuine and the address on the voter registration record matches that contained on the petition, the objection will be overruled.

F. Signer Signed Petition More Than Once at Sheet/Line Indicated

If the signatures on the sheet and line numbers indicated match, the objection shall be sustained and all but the signature appearing on or closest to the first petition sheet shall be invalidated.

G. Signature Incorporates Initials/Name isn't Identical to Registration Record

If, for example, the registration record indicates "John E. Jones", 1020 South Spring, Spfld., and the petition lists "J. Jones" at 1020 South Spring, Spfld, the objection will be overruled if the signature on the card and the petition match. An objection that is based solely on the fact that a petition signature differs in form from the signature on the voter's registration card will be denied as failing to state grounds for an objection.

H. Voter Registration Record of Petition Signer Cannot be Located

The disposition of the objection depends on the grounds. If the objector is alleging that the person is not registered to vote at the address shown on the petition, the objection will be sustained. If the objection is based on the circumstances set forth in **A, D** or **F** above, where the only evidence to substantiate the objection is contained on the voter registration card, the objection will be overruled.

I. Petition Signer's Voter Registration is on Inactive Status

The objection shall be sustained. The Candidate may introduce parol evidence that the voter in question is still registered at the address shown on the petition.

II. Objections to Circulators

A. Circulator did not Sign Petition Sheet

If the circulator's statement is unsigned, the objection shall be sustained, and all the signatures on the petition sheet shall be invalidated.

B. Ineligible Circulator

The fact that a circulator is not 18 years of age, or a United States Citizen or a resident at the place he or she states in the affidavit may be proved by any competent evidence. Invalid circulators may not circulate petitions and a petition page so circulated may violate two separate requirements of the Election Code. A false oath is a separate violation. The use of more than one ineligible circulator may constitute a pattern of fraud, providing a basis for disqualifying the entire petition.

C. Circulator's Signature Not Genuine

If the circulator is a registered voter in Illinois, his or her original signature on his or her registration card shall be examined. NOTE: It is not a requirement that a petition circulator be a registered voter. If, in the opinion of the person examining the signature, the signature is not genuine, the objection shall be sustained. The validity of Non-resident or non-registered circulator's signatures may be proved by any competent evidence. Collateral evidence of the validity of the signature of the circulator is admissible, such as testimony of a person purporting to observe one person signing the name of another circulator. There is no requirement that a signature be in cursive rather than printed form, and an objection solely on the ground that the signature is printed and not in cursive form, will be denied as failing to state grounds for an objection

D. Circulator's Address is Incomplete

The circulator's address must be as complete as usage in his or her town, county or state requires. When the circulator's address does not indicate a street name and/or

rural route number, the objection shall be sustained subject to rehabilitation by the candidate upon the production of a valid address.

E. Use of Registration Card as Evidence

If the circulator is a registered voter in any state, a certified copy of his or her registration document is competent evidence of age, citizenry and residence.

F. Purported Circulator Did Not Circulate Sheet

Upon proof by the objector that the individual who signed as circulator did not circulate the petition sheet or personally witness the signing of the signatures on the petition sheet, the entire sheet shall be invalidated. See also II (C) above.

G. Sheet Not Notarized

If the petition sheet is not notarized, the entire sheet will be invalidated.

H. Purported Notary Did Not Notarize Sheet

If the petition sheet is not in fact notarized by the notary who purports to notarize it, the entire sheet will be invalidated. See also II(C) above.

III Miscellaneous Objections

A. Signatures Exceed the Statutory Maximum

If a petition is filed that contains signatures in excess of the statutory maximum, an objection solely on that basis will not result in the petitions being invalidated. However, for purposes of determining the total number of valid signatures, the Board will not consider any signatures in excess of the statutory maximum.